IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 2976 TO 2980 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHATASANA SEVA SAHAKARI MANDALI LTD

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioners

MR PR ABICHANDANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/07/2001

COMMON ORAL JUDGEMENT

In these petitions under Article 226 of the Constitution, five co-operative societies registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act") and carrying on business in Unjha taluka, which was originally in Patan District and now in Mehsana District, and who are the members of the APMC, Mehsana have challenged the order dated 31.3.1999/1.4.2000 passed by the State Government in the Agriculture & Cooperation Department under Section 155 of the Gujarat Cooperative Societies Act, 1961.

2. The Registrar of Cooperative Societies, Mehsana had issued show cause notices to the five petitioners herein in Aug. 1998 calling upon the petitioners to show cause why orders of interim liquidation should not be passed under Section 107(1)(c)(iv-a) of the Act and why the liquidator should not be appointed under Section 108(1) of the Act. The petitioners submitted their replies in Aug. 1998. Thereafter in September, 1998, after hearing the petitioners, the District Registrar passed orders of interim liquidation under Section 107(1)(c)(iv-a) and also appointing the liquidator under Section 108(1) of the Act on the grounds that the petitioner-societies were not carrying on business for about 5 years; the petitioners had not made necessary efforts for recovery of outstanding dues; the petitioners were incurring losses; there was no reasonable prospect of the revival of the societies and that the societies were having audit classification in `D' class.

Aggrieved by the above orders, the petitioners went in appeal before the Additional Registrar (Appeals) who allowed the appeals on the ground that the irregularities alleged against the petitioners were not so serious that a drastic remedy of interim liquidation or appointment of liquidator was called for. The appellate authority also observed that the liquidation was a remedy of last resort; that the petitioners should have been given an opportunity to improve their performance and not to repeat the mistakes committed in the past. Accordingly, by orders dated 8.12.1998, the Assistant Registrar allowed the appeals.

Against the aforesaid orders, revision applications were filed by respondent No. 5 (who are different persons in these five petitions) before the State Government in January, 1999. The State Government allowed the revision applications on the ground that the irregularities committed by the petitioners were serious and the orders of interim liquidation under Section 107 of the Act and the appointment of liquidator under Section 108 of the Act were justified as the Mehsana District Central Cooperative Bank by their letter dated 1.6.1995 had also recommended liquidation of the petitioners and the audit reports were also against the petitioners.

3. Mr KS Jhaveri, learned counsel for the petitioners has submitted that the State Government has passed the impugned orders without considering that respondent No. 5 in the respective petitions had no locus standi to file those revision applications as

respondent No. 5 in the respective petitions are not the members of the petitioner societies and they had never made any application for joining them as necessary parties before the appellate authority. It is further contended that the impugned orders were passed by the Registrar on the basis of the record available for the period upto 1995. When the Assistant Registrar (Appeals)-the appellate authority had given a finding that the mistakes allegedly committed by the petitioners were not so serious as to call for such extreme step of liquidation, the State Government ought not to have disturbed such finding in revision and that too without considering the performance of the petitioners after 1995. According to Mr Jhaveri, the performance of the petitioner-societies has considerably improved after 1995. Therefore, there was no justification for the revisional authority to set aside the orders of the appellate authority and to restore the orders of the District Registrar which were passed on the basis of the record available upto 1995 only.

4. On the other hand, Mr PR Abichandani, learned AGP for respondent Nos. 1 to 3 has opposed the petitions and submitted that this Court may not interfere with the impugned orders of the State Government in revision when the petitioner-societies were found to have committed irregularities which, in the opinion of the State Government, were serious enough to warrant the orders of interim liquidation and appointment of liquidators.

5. Having heard the learned counsel for the parties, it appears to the Court that since during pendency of the appeals before the Assistant Registrar, the orders passed by the Deputy Registrar were not allowed to be implemented and since the appellate authority allowed the appeals and subsequently also during pendency of these petitions, the orders of the State Government in revision have also been stayed, for all practical purposes, the orders of interim liquidation and appointment of liquidators have not come into force. In this view of the matter, the petitioner societies have continued to function for more than three years after the orders were initially passed by the District Registrar and for more than five years after the initial show cause notices were issued by the Deputy Registrar in 1995. It, therefore, appears that the performance of the petitioner societies for the last five years has not been looked into by the State Government while passing the impugned orders restoring the orders of the Deputy Registrar for interim liquidation of the petitioner-societies and for appointment of the liquidator under Section 107 and 108

of the Act.

6. In view of the above, the impugned orders dated 31.3.2000/1.4.2000 of the State Government in Revision Application Nos. 23 to 27 of 1999 are hereby quashed and set aside with liberty the District Registrar to take into consideration the performance of the petitioner-societies for the last five years also and thereafter to decide whether any proceedings are required to be initiated under Sections 107 and 108 of the Gujarat Cooperative Societies Act, 1961 against the petitioner-societies or against any one or more of them.

The petitions are accordingly disposed of in terms of the aforesaid directions.

Rule is made absolute to the above extent with no order as to costs.

(M.S. Shah, J.)

sundar/-